

CIVIL SERVICE COMMISSION MINUTES

October 22, 2003

A special meeting of the Civil Service Commission was held at 12:30 p.m., in Room 358 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Barry I. Newman
Sigrid Pate
Marc Sandstrom
Gordon Austin
A.Y. Casillas

Comprising a quorum of the Commission

Support Staff Present:

Larry Cook, Executive Officer
Ralph Shadwell, Senior Deputy County Counsel

Selinda Hurtado-Miller, reporting

Approved
Civil Service Commission
November 19, 2003

**CIVIL SERVICE COMMISSION MINUTES
OCTOBER 22, 2003**

12:00 p.m. CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

12:30 p.m. OPEN SESSION: Room 358, 1600 Pacific Highway, San Diego, California 92101

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
7,12,15,17,18,19	12,15,16	8,9	10,20

COMMENTS: Motion by Pate to approve all items not held for discussion; seconded by Casillas. Carried.

**CLOSED SESSION AGENDA
County Administration Center, Room 458
(Notice pursuant to Government Code Sec. 54954.2)
Members of the Public may be present at this
location to hear the announcement of the
Closed Session Agenda**

A. Commissioner Austin: Everett Bobbitt, Esq. on behalf of **2003/004***, Deputy Sheriff-Detentions, appealing an Order of Pay Step Reduction and Charges from the Sheriff's Department.

**OPEN SESSION AGENDA
County Administration Center, Room 358**

NOTE: Five total minutes will be allocated for input on Agenda items unless additional time is requested at the outset and the President of the Commission approves it.

MINUTES

1. Approval of the Minutes of the special meeting of September 25, 2003.

Approved.

CONFIRMATION OF ASSIGNMENTS

2. Commissioner Casillas: Wendell Prude, SEIU Local 2028, on behalf of **Rick Harmon**, former Junior Accountant, appealing an Order of Termination and Charges from the Department of General Services.

Confirmed.

3. Commissioner Pate: Wendell Prude, SEIU Local 2028, on behalf of **Annie Brown**, former Intermediate Clerk Typist, appealing a Final Order of Removal and Charges from the Health and Human Services Agency (HHSA).

Confirmed.

4. Commissioner Austin: **Kesha Newcomb-Pugh**, former Legal Support Assistant II, appealing an Order of Automatic Separation from County Service Upon Absence without Authorized Leave from the HHSA.

Confirmed.

5. Commissioner Newman: Veronica M. Aguilar, Esq. on behalf of **Robert Aebi**, former Stock Clerk, appealing an Order of Termination and Charges from the Sheriff's Department.

Confirmed.

DISCIPLINES

Appeals

6. Everett Bobbitt, Esq., on behalf of **Cesario Avila**, Traffic Deputy, Sheriff's Department, appealing his reassignment from the Traffic Division to the Patrol Division by the Sheriff's Department. (Continued from the Commission's September 25, 2003 special meeting.)

RECOMMENDATION: Deny Request.

Staff recommendation approved.

Findings

7. Commissioner Austin: Everett Bobbitt, Esq. on behalf of **2003/004***, Deputy Sheriff-Detentions, appealing an Order of Pay Step Reduction and Charges from the Sheriff's Department.

FINDINGS AND RECOMMENDATIONS:

The matter of the appeal of 2003/004, from a written Order of Pay Step Reduction and Charges reducing his pay in the class and position of Deputy Sheriff-Detentions in the Sheriff's Department was duly noticed and came on for hearing on September 25, 2003. Commissioner Gordon Austin was appointed as the hearing officer. The hearing was closed to the public based upon California Penal Code Section 832.7 and San Diego Police Officers' Association, et al. v. City of San Diego Civil Service Commission. During testimony of one of the Department's witnesses, John Madigan, Esq., representing the Appointing Authority, withdrew the Order of Pay Step Reduction and Charges. It is therefore recommended that the Department's withdrawal of the Order of Pay Step Reduction and Charges be approved by the Commission; that Employee be awarded back pay and benefits, including interest, for any reduction of compensation that resulted from the order of discipline; that the Commission read and file this report; and that this proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Austin to approve Findings and Recommendations; seconded by Pate. Carried.

DISCRIMINATION

Complaints

8. **Edward Ewert**, Appraiser II, Assessor/Recorder/County Clerk (ARCC), alleging age discrimination by the ARCC. (See No. 13 below.)

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

Staff recommendation approved. Commissioner Casillas appointed. (Commissioners Newman and Sandstrom recused.)

9. **Stacie Neldaughter**, Deputy Public Administrator-Guardian II, HHSA, alleging disability and retaliation discrimination and other transgressions by the HHSA.

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation relating to alleged discrimination and report back. Deny requests relating to other alleged transgressions without prejudice.

Staff recommendation approved. Commissioner Sandstrom appointed.

10. **Curtis Scott**, Deputy Sheriff-Detentions, alleging retaliation discrimination by the Sheriff's Department and requesting, under Civil Service Rule 6.1.4, that the Commission issue a temporary order to maintain the status quo relative to the selection process for the classification of Sergeant-Detentions in the Sheriff's Department. (See No. 20 below.)

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back. Deny request for temporary order without prejudice.

Withdrawn.

Findings

11. Commissioner Sandstrom: Cristina del Toro on behalf of **Edward del Toro**, Equipment Operator, Department of Public Works (DPW), alleging retaliation discrimination by the DPW. (See No. 14 below.)

FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission on August 20, 2003, the Commission appointed Marc Sandstrom to investigate the complaint submitted by Cristina del Toro on behalf of Complainant. The complaint was concurrently referred to the Office of Internal Affairs for investigation and report back. The report of OIA was received and reviewed by the Investigating Officer, who concurred with the findings that there was no evidence to support Employee's allegations of retaliation discrimination by the Department of Public Works, and that probable cause that a violation of discrimination laws occurred based on retaliation was not established in this matter. It is therefore recommended that this complaint be denied; that a selection process hearing under the provisions of Civil Service Rule X is not warranted; that the Commission approve and file this report with a findings of no probable cause that Complainant has been discriminated against on any basis protected by law; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Sandstrom to approve Findings and Recommendations; seconded by Austin. Carried.

12. Commissioner Austin: Marc Levine, Esq., on behalf of **Brenda Daly**, Deputy District Attorney IV, alleging harassment, retaliation and political affiliation discrimination by the Office of the District Attorney.

FINDINGS AND RECOMMENDATIONS:

Having been out of town for a few weeks, Commissioner Austin requested that the reading of the Findings and Recommendations be continued to the next meeting of the Civil Service Commission so that he can review the Exhibits attached to OIA's investigation and report. Commissioner

Sandstrom commented on the calculation of statistics and requested that a closer review be undertaken prior to these Findings being rendered.

**Motion by Austin to continue this matter; seconded by Sandstrom.
Carried.**

SELECTION PROCESS

Complaints

13. **Edward Ewert**, Appraiser II, appealing his non-selection for the classification of Appraiser III by the ARCC. (See No. 8 above.)

RECOMMENDATION: Hold in abeyance pending the outcome of the discrimination investigation listed above.

Staff recommendation approved.

14. Cristina del Toro on behalf of **Edward del Toro**, Equipment Operator, appealing his non-selection for the classification of Senior Equipment Operator by the DPW. (See No. 11 above.)

RECOMMENDATION: Take action pending the outcome of the discrimination complaint listed above.

Denied.

15. **Richard Goggin**, Deputy Sheriff, appealing the Department of Human Resources' (DHR) determination that he is ineligible to compete in the selection process for the classification of Sheriff's Sergeant.

RECOMMENDATION: Deny Request.

Appellant contends that he was informed by a DHR analyst that he did originally pass with a "raw score" of 86, however after the "conversion score" it was 69, which was not a passing score. Mr. Goggin further stated that he received perplexing information concerning technical issues involved in raw scores being converted to a 100-point system.

Susi Kuklinski, representing DHR explained that the manner in which raw scores are converted to the 100-point system is accomplished via a computerized applicant tracking system (SIGMA). She further explained that there are several factors taken into consideration in determining an appropriate "pass point". DHR uses a Written Test Pass Point Rationale worksheet in order to consistently calculate pass points.

The Commission requested that DHR provide it with the mathematical calculation utilized in scoring exams. This matter was continued to the next meeting of the Civil Service Commission.

16. **Miwa Pumpelly**, Administrative Analyst II, HHSA, appealing DHR's determination that she is ineligible to compete in the selection process for the classification of Administrative Analyst III.

RECOMMENDATION: Continue to the next meeting.

Staff recommendation approved.

17. **Valerie McBrayer**, Administrative Analyst I, Sheriff's Department, appealing DHR's determination that she is ineligible to compete in the selection process for the classification of Administrative Analyst II. (Continued from the Commission's September 25, 2003 special meeting.)

RECOMMENDATION: Consider all written and verbal input.

Mary Porath and Valerie McBrayer both addressed the Commission regarding this item and item no. 18 below. Ms. Porath questioned why DHR would not accommodate her request as they have with another employee. Valerie McBrayer stated that the justification from DHR that its practices are legal, does not always equate to a fair practice. Both Appellants request a Rule X hearing.

Jessica Bryden, Sr. HR Analyst with DHR, explained that in this situation, due diligence did occur and DHR took the action that was most fair and most consistent.

Motion by Austin to conduct a Rule X hearing; seconded by Pate.

AYES: Austin, Pate
NOES: Casillas, Sandstrom, Newman
ABSTENTIONS: None

Motion fails. Rule X Hearing denied.

18. **Mary Porath**, Administrative Analyst I, Sheriff's Department, appealing DHR's determination that she is ineligible to compete in the selection process for the classification of Administrative Analyst II. (Continued from the Commission's September 25, 2003 special meeting.)

RECOMMENDATION: Consider all written and verbal input.

See Item No. 17 above. Rule X hearing denied.

19. **Paul Johnsen**, Deputy District Attorney III, appealing the selection of an alleged ineligible candidate who was certified to the classification of Deputy District Attorney IV. (Continued from the Commission's September 25, 2003 special meeting.)

RECOMMENDATION: Grant Request.

Michael Baranic, Esq. spoke on behalf of the real party in interest, Steve Davis. He pointed out that if there is no reasonable remedy available to Mr. Johnsen, a hearing cannot be granted. Further, he stated that Mr. Davis has passed his probationary period and is now a permanent employee.

Ralph Shadwell, Sr. Deputy County Counsel, advised the Commission that case law has held that failure to follow the rules of the civil Service System can result in an employee being removed from his position, even after passing the probationary period. Larry Cook, Executive Officer, explained to the Commission that Mr. Johnsen was not able to attend this meeting for good cause, and the Commission may want to continue this matter until Mr. Johnsen can be present.

The Commission opted to vote on this matter since no new facts have been presented and this matter has been continued once before.

Motion by Sandstrom to deny request; seconded by Casillas. Carried.

RECONSIDERATION

20. **Curtis Scott**, Deputy Sheriff-Detentions, requesting reconsideration of the Commission's September 25, 2003 action denying his request for a Civil Service Rule X selection process hearing. (See No. 10 above.)

RECOMMENDATION: Allow parties to address the Commission regarding the request for reconsideration.

Withdrawn.

OTHER MATTERS

Extension of Temporary Appointments

- 21. Department of Agriculture Weights & Measures
 - 1 Insect Detection Specialist I (Alfred King)
- 22. Department of Public Works
 - 1 Road Crew Supervisor (Harold Jones)

RECOMMENDATION: Ratify Item Nos. 21 & 22.

Item Nos. 21 and 22 ratified.

- 23. Public Input.

NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE NOVEMBER 19, 2003.

* The identity of the peace officer is held confidential per Penal Code Section 832.7 (San Diego Police Officers' Association, et al. v. City of San Diego Civil Service Commission).